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DEPT PLEASE PASS USTR PAUL BURKHEAD AND ELIZABETH HAFNER

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SUBJECT: AZERBAIJAN: TECHNICAL SUPPORT STRATEGY AND PROGRAM  
FOR WTO ACCESSION

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¶1. (SBU) Democratic and economic reform is essential to Azerbaijan's long-term stability and prosperity. Azerbaijan's WTO accession process is a vital instrument of reform efforts, as it will put in place the legal, regulatory and institutional framework necessary for Azerbaijan to emerge as a rule-based market-oriented, transparent democracy. Acceleration of the WTO accession process is perhaps the best and only tool that can be effective in forcing fundamental change in an economy dominated by monopolies and corruption. We believe that renewed US assistance to support Azerbaijan's WTO accession efforts -- particularly assistance that focuses on establishing an open, transparent legal system -- is a critical part of our overall reform strategy.

¶2. (SBU) We welcome the Department and USTR's interest in renewed technical assistance for Azerbaijan's WTO accession process, and agree that any U.S. WTO accession support should be based on clear evidence of political will and commitment by the GOAJ (Reftel A). Embassy also agrees that solid benchmarks and a constant evaluation of progress will be a part of the U.S. assistance. In addition, Embassy welcomes any assistance and expertise U.S. agencies can offer to bolster U.S. assistance efforts in Azerbaijan. Embassy feels that recent GOAJ measures and statements signal a new and serious commitment to WTO accession (Reftel B).

¶3. (SBU) Embassy feels it is important to take advantage of the current window of opportunity to accelerate Azerbaijan's WTO accession process and proposes to implement an ambitious WTO accession support program, in addition to the current targeted efforts being carried out by USAID over the next six weeks. U.S. efforts will focus on providing time-effective expert feedback on GOAJ's accession status, including the legal and regulatory reform measures which need to be completed to accelerate progress at the WTO working party level meetings. These efforts will be closely coordinated with U.S. experts in Washington and Geneva. We do not propose to provide assistance that will strengthen Azerbaijan's position vis-a-vis the United States in our bilateral negotiations. The U.S. expects the GOAJ to support the accession process in several ways and we will insist that the GOAJ be responsible for paying for all translation services. In addition, the GOAJ has already committed to paying for supplementary WTO support staff at the Ministry of Economic Development (MED) and Ministry of Foreign Affairs (MFA); it also has stepped up its public education and advocacy efforts. Cost-sharing of discrete portions of the technical

assistance may also be examined.

#### STATUS OF GOAJ WTO EFFORTS

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¶4. (SBU) The recently completed review of the status of the GOAJ's WTO efforts sponsored by USAID has revealed the complexity of Azerbaijan's WTO efforts. Based on more than 20 meetings at 15 ministries and state agencies, the WTO expert confirmed that there is widespread political will to accede to the WTO, driven mainly by a desire to accede before Russia. In addition, there is a widespread belief within the GOAJ that economic gains from WTO membership will outweigh any costs or losses and that WTO membership will fully integrate Azerbaijan into the world economy.

¶5. (SBU) There is resolve at all ministries to complete drafting of all 22 pieces of legislation included in the Legislative Action Plan which are due no later than June 30, ¶2007. In addition to the pending draft laws developed thus far, there are an additional 25 to 30 pieces of legislation and regulatory decrees which would need to be developed. These cover a broad range of critical areas including but not limited to trade-in-goods, financial services, telecommunications, energy, customs, IPR public procurement, and the competition law regime. The GOAJ has indicated that it would submit all draft legislation to Working Party Members for comment prior to adoption.

¶6. (SBU) Fulfilling the current legislative action plan is considered the highest priority task necessary to satisfy the Presidential Decree regarding draft WTO legislation and meet initial commitments made to WTO WP Members. Ministries and state bodies are concerned that they will be unable to meet

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the June 30 deadline and uphold Azerbaijan's commitments to WTO WP Members. In addition, the GOAJ is concerned that the initial drafts of proposed new legislation will not meet WTO requirements and Members' expectations due to the lack of technical capacity within the GOAJ and inadequate technical assistance to ensure drafts are fully in line with WTO agreements.

¶7. (SBU) Various ministries and state bodies understand that the Legislative Action Plan is not comprehensive and that there is a need for additional reforms. Government ministries and agencies do not have the technical expertise, however, to identify the missing reforms. The GOAJ's commitment to replace old non-compliant laws with new, fully WTO compliant laws, is a positive sign. Legal drafting is progressing slowly and only five drafts have been completed to date: the Draft Law on Technical Regulations, the Draft amending the Law on Copyrights and Related Rights, the Draft amending the Law on Patent, the Draft Amending the Tax Code, and Draft Cabinet of Ministers Resolution on Excise Taxes.

¶8. (SBU) Two of the three drafts due to the Presidential Apparat no later than the end of March 2007 have been prepared but have not yet been submitted to the Working Group on Legislative Changes. These are the drafts amending the Law on Copyrights and Related Rights and the Law on Patent. The draft amending the Law on Currency Control has not been prepared. The GOAJ expects to send the remaining drafts from ministries and state agencies over the next four weeks to the Working Group on Legislative Changes for review and approval. A Draft Customs Code (to replace the existing code) is being finalized at the Customs Committee.

¶9. (SBU) Only two WTO related laws were adopted in recent years: the Law on Phytosanitary Control (May 2006) and the Law on Veterinary Service (May 2005). According to the WTO consultant, the quality and adequacy of recently adopted laws and drafts is questionable. Preliminary reading and discussions with authorities indicate a lack of full compliance with the WTO agreements. Many officials within

the GOAJ have misunderstandings and misperceptions regarding compliance with WTO. Many believe that there is no need to reflect all provisions of WTO agreements in national legislation given that the Constitution stipulates that international treaties supersede national legislation. In certain cases, key rules and principles of WTO agreements appear to be deferred in the Legislative Action Plan for adoption in Cabinet resolutions rather than in laws. This situation appears to apply to technical barriers to trade (TBT), Customs Valuation and Rules of Origin.

¶10. (SBU) There is limited and insufficient WTO-related international technical assistance to the GOAJ. In meetings with the WTO consultant, government ministries and state bodies expressed enthusiasm for immediate technical assistance to assist in reviewing and drafting legislation called for in the Legislative Action Plan. There is a need for massive translation of many existing legislation and all draft ones (estimated at around 600 pages of legal text). The GOAJ is concerned that drafts may not be adequately translated into English and may lead to confusion and unnecessary questions by WP Members. Embassy will insist that the GOAJ pay for all translation of documents; we will provide the GOAJ with any needed assistance in finding appropriate translation service companies. Deputy Minister of Economic Development Jabbarov separately explained to us that this is not a question of funding; the GOAJ lacks WTO experts who can translate technical, WTO-specific legislative language into Azerbaijani.

¶11. (SBU) The GOAJ is aware that WTO membership may likely have negative impact in certain sectors. There is a need for additional education and economic and sectoral analysis to assess impact and identify actions for adjusting to mitigate any negative impact. Throughout the GOAJ, there is a lack of experience, skills and understanding of methodology to undertake negotiations, particularly bilateral negotiations on market access for goods and services. There is a lack of experience in classification of agricultural subsidies and negotiating multilateral agreements. Coordination among ministries appears adequate while government coordination and cooperation with the private sector is poor. The WTO Accession Division at the Ministry of Economic Development is understaffed. Currently there are only four employees, including a legal expert, SPS/TBT specialist, and service specialist, although the GOAJ has pledged to increase this number and is requesting funding for up to 90 new

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WTO-specific positions in its new budget.

#### U.S. WTO ASSISTANCE GOALS

¶12. (SBU) The WTO consultant's initial conclusions highlight that the GOAJ lacks the technical capacity to effectively organize and finalize the complex range of legislative and regulatory reform documents which will be required to achieve this goal. The scope of remaining WTO work combined with the tremendous lack of capacity within the GOAJ strongly argues against a selective or partial engagement approach and underscores the importance of an intensive near-term engagement across a broad-range of legislative and regulatory reform areas to take advantage of the new political will to accelerate the accession process. Embassy believes that the most effective approach is to provide intensive expert on-the-ground support to review and facilitate effective revision of draft laws developed by local experts and to train local technical teams which will be required to carry out this work. For these purposes, we propose a major USAID-supported and field-based technical support and training effort to be closely coordinated with interagency representatives in Washington and Geneva.

¶13. (SBU) The breadth of the necessary reform measures and the extraordinary limitations on the GOAJ's technical and

organizational capacity to meet this challenge, underscores the importance of providing intensive immediate local technical and training support. This effort is required in order to help the GOAJ respond effectively to what may be its last effective chance to get working group discussions back on track. In the absence of intense technical assistance the legislative and regulatory reform package which GOAJ will likely submit to Geneva this summer will almost undoubtedly be deficient in relation to core WTO compliance requirements.

This would lengthen the working party negotiation period and gradually sap working party focus and interest in the Azerbaijan's accession process.

¶14. (SBU) The core goal of the technical assistance and training support program will be to systematically build understanding of, and buy-in for, WTO accession-related legal, regulatory, and institutional reform requirements along with support for reform in the range of working party review areas. It is important to note that original drafting will be done by Azerbaijani experts, and of course no technical support will be provided for the development of GOAJ negotiating positions. These areas will be the exclusive provenance of the GOAJ.

¶15. (SBU) Local USG support efforts will be coordinated with those of other major donors, including the European Union, World Bank, and the Asian Development Bank. Our initial review has indicated that no cohesive or focused efforts are being provided by other donors in a manner that comprehensively covers support needs in any major accession area. At a broader level, we are committed to rapidly establishing an operational on-the-ground coordinating process which will both ensure non-duplication of efforts and maximize our capacity to generate and report back on the WTO-related support programs of other donors. This is particularly important in areas such as sanitary and phytosanitary control (SPS) where the advice and support provided by other donors may not be consistent with that provided by USG-financed experts.

¶16. (SBU) Embassy proposes to implement the envisaged WTO support program through a USAID-funded task order by June 2007. Embassy will continue the ongoing interagency discussion and coordination of efforts to ensure effective review of the results of the current limited support program, scheduled to end in late May. This support program will provide long-term technical assistance in several areas including agriculture, trade and investment, legal and regulatory reform, and customs administration. In addition, short-term assistance may include SPS support and macroeconomics. Assistance to Parliament either directly or through ongoing USAID technical assistance programs is also considered due to the central role Parliament plays in the legislative process.

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